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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/782,032

02/19/2004

Matthew L. Severns

OM145

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ROGER M. RATHBUN
13 MARGARITA COURT
HILTON HEAD ISLAND, SC 29926

EXAMINER

BOTTORFF, CHRISTOPHER

ART UNIT

PAPER NUMBER

3618

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/782,032	Applicant(s) SEVERNS, MATTHEW L.	
	Examiner Christopher Bottorff	Art Unit 3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 10-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The amendment filed December 8, 2006 has been entered. Claims 1-17 are pending with claims 10-17 being withdrawn from further consideration as being drawn to a nonelected invention. Claims 1-9 are under consideration.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Frank et al. US 2002/0114983.

Frank et al. disclose a transport cart having a source of electrical power comprising a fuel cell 200. See paragraph 0028, lines 2-4.

The transport cart is capable of being attached to a patient care apparatus, which is capable of supporting a patient. See Figure 1. The transport cart is capable of being electrically connected to the patient care apparatus via a power cord accommodated by receptacle 110 to supply electrical power to the patient care apparatus. See Figure 1 and paragraph 0023, lines 8-11. The receptacle 110 and plugs of cord 92 serve as a latching means from which the cart may be latched to a patient care apparatus via the power cord. Also, the cart can be moved with the patient care apparatus for transporting the attached patient care apparatus. See paragraph 0026.

The patient care apparatus to which the transport cart is capable of being attached may be any compatible power consuming device, including an infant care apparatus. See paragraph 0023, lines 8-11. The transport cart includes a fuel reservoir 300 to contain fuel for use in the fuel cell, and the fuel reservoir is readily replaceable. See paragraphs 0034 and 0043. The transport cart has wheels 132, 134 to enable it to be readily moved along with an infant care apparatus. See Figure 1. Also, the fuel cell comprises a hydrogen-oxygen fuel cell. See paragraph 12, lines 6-8.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 5, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frank et al. US 2002/0114983 in view of Negishi US 6,165,633.

Frank et al. do not disclose that fuel cell system is a methanol system that includes a reformer or that the fuel cell utilizes zinc pellets to create electrical power. However, Negishi teaches that providing a fuel cell system as a methanol system that includes a reformer 22 is desirable. See column 12, lines 1-7. The system of Negishi includes a fuel reservoir 28 to contain methanol in liquid form and the reformer 22 converts the liquid methanol into hydrogen gas that is used in the fuel cell. See column 15, lines 46-48. Negishi further teaches the desirability of utilizing zinc pellets in a fuel

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cell system to create electrical power. See column 17, lines 41-43, and column 17, line 56, through column 18, line 4.

From the teachings of Negishi, providing the fuel cell system of Frank et al. as a methanol system that includes a reformer would have been obvious to one of ordinary skill in the art at the time the invention was made. This would minimize the duration that hydrogen, a volatile fuel, is present in the system by storing and converting methanol rather than storing hydrogen. From the further teachings of Negishi, utilizing zinc pellets in the fuel cell system that includes methanol and a reformer would have been obvious to one of ordinary skill in the art at the time the invention was made. This would assist in the reforming process.

Response to Arguments

Applicant's arguments filed December 8, 2006 have been fully considered but they are not persuasive.

While replacing "affixation means" with "latching means" does add further specifics of the connection arrangement to the claims, the new limitations do not distinguish the claimed invention over the prior art. Recitation of a "latching means" does not imply structure that is distinguishing. Merriam Webster's Collegiate Dictionary, Tenth Edition, defines a latch as "any of various devices in which mating mechanical parts engage to fasten but usually not to lock something." See *Merriam Webster's Collegiate Dictionary, Tenth Edition*, Merriam Webster, Inc., Springfield, Massachusetts, 1997. The receptacle 110 and plugs of cord 92 of Frank et al. form such a device.

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Moreover, the disclosure does not describe the specific structure of the latch in a way that would support a distinguishing claim amendment reciting the latch structure.

The detailed structure of the disclosed invention by which the cart is joined to the patient care apparatus includes, but is not limited to, a transport cart body that inserts between two parallel base legs of a specific style of incubator and a specific mounting arrangement of the latches on the body. This is substantially more than the claimed "latching means," which does not distinguish the invention over the prior art. The specific incubator structure is not defined in the claims. Also, the cart is not claimed in sufficient detail such that it alone distinguishes over the prior art. Amending the claims to fully capture the detailed structure by which the cart is joined to the patient care apparatus would be more favorably considered.

Numerous limitations of the claims attempt to define the apparatus in terms of function and intended use. For example, "adapted to be latched to a patient care apparatus" and "to enable the movement of that patient care apparatus" in claim 1. However, it is well settled that claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly*, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device *is*, not what it *does*." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). (emphasis in original). Furthermore, claims containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all of the structural limitations of the claims. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat.

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App. & Inter. 1987). Here, the cited prior art teaches all of the structural limitations of the claims. The ability to be latched to a patient care apparatus and move the patient care apparatus do not distinguish the claimed transport cart from the prior art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Bottorff whose telephone number is (571) 272-6692. The examiner can normally be reached on Mon.-Fri. 7:30 a.m. - 4:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Christopher Bottorff